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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly an addendum to the report of the United Nations High Commissioner for Human Rights on the Human Rights Field Operation in Rwanda, in accordance with General Assembly resolution 51/114 of 12 December 1996.

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Annex

Addendum to the report of the United Nations High Commissioner for Human Rights on the Human Rights Field Operation in Rwanda

I. Introduction

1. As stated in the report of the United Nations High Commissioner on the Human Rights Field Operation in Rwanda to the General Assembly at its fifty-second session (A/52/486), a careful expert assessment of the work of the Field Operation, in close consultation with the Government of Rwanda, had become necessary in order to chart its future direction. Accordingly, the High Commissioner requested Ian Martin, the former Chief of the Field Operation from October 1995 to September 1996, to visit Rwanda from 6 to 11 October 1997 to assess the role of the Field Operation in the current human rights situation in Rwanda and to make recommendations on the relevance of its mandate, taking into account the views of the Government of Rwanda and the prevailing security conditions. In the course of his mission, Mr. Martin met the President, Vice-President and other senior members of the Government of Rwanda; partner agencies, including the United Nations Development Programme, the Office of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross; and representatives of Governments contributing to the funding of the Field Operation. The present addendum to the High Commissioner's report sets out the findings and recommendations arising from Mr. Martin's assessment mission, which are still under consideration. An informal consultation was held at Geneva on 27 October 1997, to which relevant United Nations partners with current field involvement in Rwanda were invited. The assessment report will be discussed further by the Executive Committee on Humanitarian Affairs in the context of the need for a more integrated approach by United Nations agencies, as agreed at the meeting of the Executive Committee on 30 October 1997.

II. Findings of the assessment mission

2. Developments in the security and human rights situation since the massive return of Rwandans from the Democratic Republic of the Congo (formerly known as Zaire) and the United Republic of Tanzania in late 1996 have been described in the High Commissioner's report to the General Assembly.[1] The Human Rights Field Operation in Rwanda contributes to the protection and promotion of human rights in the aftermath of the 1994 genocide, and in the context of ongoing insurgency and counter-insurgency operations. The difficult and dangerous circumstances in which the Field Operation is carrying out its mandate have cost the lives of seven of its staff. The Field Operation remains committed to re-establishing its presence in the prefectures and communes, as security conditions permit. In early October 1997, a suboffice was reopened in Cyangugu. A field team was preparing to take up residence at Gisenyi but this was postponed owing to an intensification of fighting in the area.

3. As the prime example in the novel technique of the High Commissioner to deploy a human rights field presence *in situ*, even in a situation of internal armed conflict, the Field Operation faces a number of challenges, particularly in the light of the security conditions prevailing in Rwanda. Human rights monitoring has developed much expertise regarding violations committed in the context of political conflict and repression. The Field Operation was, however, not designed specifically to monitor violations of international humanitarian law being perpetrated in the course of severe hostilities or armed conflict. Inevitably, human rights monitors have least access where such conflict is most intense. On the other hand, a human rights presence cannot ignore its responsibility to investigate the credibility of reports that may arise from the conflict areas concerning, for example, allegations of deliberate killings of civilians taking no active part in hostilities, which, if true, concern violations of international human rights and humanitarian law.

4. The efforts of the Field Operation to investigate, discuss with the Government of Rwanda, and then report on the killings of civilians by the Rwandese Patriotic Army during counter-insurgency operations, have made the Field Operation's relations with the Government tense. In May and June 1997, following the withdrawal of field teams from the western prefectures of Rwanda and the imposition of United Nations security restrictions which interrupted the Field Operation's access to conflict areas, the Field Operation received reports alleging large-scale killings of civilians by the Rwandese Patriotic Army in Ruhengeri prefecture, as described in the High Commissioner's report. These allegations were investigated from Kigali, without access to the areas where the killings were alleged to have occurred. The Field Operation was able to access first-hand and

credible sources, assess them in a responsible manner, and make serious efforts to discuss them with the Government before and after submitting a confidential written report to the Ministry of Defence. It must be noted, however, that in the present circumstances there are definite limitations on the ability to verify accounts of such incidents or to estimate with precision the numbers killed. The responsibility to investigate fully such incidents remains with the Government.

5. Since late 1995, the Field Operation has followed the practice of submitting a comprehensive report covering a period of one or two months to the more relevant Government ministries shortly before such reports are due to be presented to Member States and concerned international organizations at Geneva. The Field Operation also submits and seeks discussion on confidential reports concerning particular incidents, patterns of incidents or issues, before they are publicly released in the form of status reports.

6. As regards follow-up on pending investigations, in mid-1996 the Military Prosecutor initiated a number of investigations into particular incidents which the Field Operation had raised with the Government. These investigations, however, do not appear to have been brought to a close, perhaps owing in part to the very limited resources that were available to the Office of the Military Prosecutor until additional staffing under the direction of a senior officer was provided to that Office in April 1997. Consequently, it seems that neither the Field Operation nor the Government considers that an effective dialogue has been maintained. This perception has been exacerbated by a lack of continuity at the level of Chief of the Field Operation.

7. The mandate of the Field Operation places equal emphasis on monitoring and technical cooperation. Efforts have been made to ensure better coordination between the two sets of activities. When monitoring activities were disrupted by the withdrawal of human rights field officers from the western prefectures in February 1997, as required by restrictive United Nations security regulations imposed in the aftermath of the assassination of five Field Operation staff on 4 February 1997 — subsequently resumed only slowly and partially, the Field Operation was restructured and a certain number of tasks reallocated among staff. In the process, greater emphasis was placed on providing support to the justice system and on intensifying efforts to promote international human rights standards. Many valuable training activities have been undertaken since then, more notably with the Rwandese Patriotic Army, the Gendarmerie and Communal Police; officials of the civilian and military justice systems; and members of the Transitional National Assembly. The Field Operation has also worked increasingly closely with Rwandan non-governmental organizations. The perception of the Government, seems to be, however, that the Field Operation remains concerned chiefly with monitoring rather than capacity-building. In contrast, other actors consider that the Field Operation has not resumed its monitoring role sufficiently and has over-allocated staff to promotional activities.

8. Members of the Government expressed concern that, in their view, the Field Operation's reports were not well verified and that, despite not being on the spot, the Field Operation failed to confirm facts before making them public. Certain government officials complained also that the objective of monitoring the human rights situation so as to assist Rwanda to progress in the human rights domain was being neglected. They recalled that the intention of the Government at the outset was to invite the presence of the Field Operation in Rwandan territory in order to encourage a sense of partnership and to help Rwandans to develop the capacity to promote human rights, rather than to bring in monitors to "police" the Government. The Government plans to establish a national human rights commission which, together with Rwandan non-governmental organizations, would assume responsibility for monitoring and promoting human rights. A number of government officials expressed appreciation for several areas of the Field Operation's work, such as the Field Operation's provision of information to the Ministry of Justice and its cooperation with the Office of the Military Prosecutor.

9. Most of the representatives of Governments that have taken the lead in contributing to the funding of the Field Operation and follow its work closely expressed the view that the human rights situation in Rwanda required re-establishment and maintenance of the Field Operation's local presence and monitoring to the maximum extent, consistent with United Nations security regulations. The Office of the United Nations High Commissioner for Refugees, which remains equally subject to United Nations security regulations and whose monitoring activities concerning the situation of returnees are therefore hampered, expressed the hope that the Field Operation would be able to resume more comprehensive visits to local detention centres. The International Committee of the Red Cross, which relies on security assessments independent of those of the United Nations and whose delegates do not travel with armed escorts, currently visits a majority but not all local detention centres.

III. Recommendations

10. The role of the Field Operation should continue to be one which combines a dissuasive local presence and monitoring with technical cooperation and capacity-building. Monitoring should be conceived as a means of assisting the Government to address problems, as a basis for a dialogue to diagnose the needs, and as encouragement to the international community to provide the help necessary to do so. Capacity-building and human rights education and promotion should be clearly linked to the diagnosis.

11. The High Commissioner's bimonthly reports have so far had a semi-public status, which has given rise to a certain ambiguity. Perhaps these reports should be replaced with the submission of reports by the High Commissioner to the Commission on Human Rights, which would be published as official United Nations documents. These reports could be more analytical than the current reports and drafted to ensure that they provide an adequate context for the human rights situation. These reports could also contain recommendations and link the analysis of the human rights situation and recommendations to the Field Operation's capacity-building cooperation with Rwandan institutions. Each draft report could be submitted in advance to the Government, and could form the basis of a dialogue, which would then be reflected in the report submitted by the High Commissioner to the Commission on Human Rights. The useful practice established by the Field Operation in issuing timely status reports on major incidents should be continued, including the practice of discussing these reports with the Government prior to their being more widely disclosed.

12. It is important that, in its reports, the Field Operation explicitly recognize the special difficulties posed by having to investigate violations of international human rights and humanitarian law in a situation of internal armed conflict. In this regard, the Field Operation should continue to investigate as far as possible reports of such violations, including those from areas to which it may not have access under United Nations security regulations. Every effort should be made to interview military commanders in the course of such investigations.

13. The credibility of the Field Operation's capacity-building and promotional role needs to be enhanced by further recognition of what the Field Operation has been doing in fact, in particular by clearly defining the link between the diagnosis of the factors giving rise to human rights violations and the priorities for capacity-building and promotion, and by a better definition of objectives. As the High Commissioner stated in her report to the General Assembly, the Field Operation has developed a substantial programme of technical cooperation activities which it could implement and which reflects extensive consultations with Rwandan partners. In further discussion with the Government, the Field Operation could select a strategic set of capacity-building goals. Further discussions are planned with the United Nations Development Programme regarding cooperation in such projects.

14. The technical cooperation programme includes training and support to the military justice system, an element which should be given very high priority. It also includes support to the independent national human rights commission that the Government proposes to create. It is most important that the necessary legislation, currently being redrafted in the Ministry of Justice, reflect best international practice. Indeed, this concern forms the major focus of the mandate of the Special Representative of the Commission on Human Rights, who is currently holding consultations with the High Commissioner's Special Adviser on National Institutions on this issue.

15. The Field Operation should consider, as a matter of priority, how its current collaboration with Rwandan human rights non-governmental organizations could be developed to further assist their independent capacity in the protection and promotion of human rights. In this regard, it may be useful to seek the participation of a non-governmental organization with experience of such capacity-building in other countries of Africa.

16. The programming of the Field Operation's human rights promotion work has lacked concrete objectives and has not always taken into consideration information and analysis concerning the human rights situation in the country. This work should be better tied to high-priority issues noted in other aspects of the Field Operation's functions, namely, the administration of justice and human rights monitoring. Such issues would include guarantees of a fair trial, the independence of the judiciary and other legal professionals, respect for lawful arrest and detention procedures, safeguards for the right to life and to physical integrity, and popular access to effective remedies for human rights violations.

17. Decisions regarding future staffing and structure must flow from the priorities established concerning the future role of the Field Operation. Field teams are currently understaffed, and some further reinforcement of field teams should take place immediately; recent deployment decisions increased to 27 the number of officers assigned to field teams. The full extent of the strengthening of field teams must depend not only on security conditions but also on the

outcome of discussions with the Government regarding the continuation of the monitoring function and local presence.

18. Strength and continuity at the level of Chief of the Field Operation remain crucial to a continuing dialogue with the Government, as well as to ensuring good morale and management internally. The difficulty and sensitivity involved in investigation and reporting in the current context require skills and experience of a high order. Greater professional experience and expertise should therefore be brought in to support the Field Operation's efforts to promote capacity-building and human rights.

19. Those responsible for security management face a very difficult situation because the areas of greatest conflict shift, the degree of risk may become general to other parts of the country and the situation remains volatile. These conditions require continuous, localized assessment. The United Nations security assessment, conducted by the United Nations Security Coordinator in March 1997, recommended that there should be a professional-level security officer recruited for each proposed field office before such offices were reopened outside Kigali. Security officers have now been designated for the offices at Cyangugu and Gisenyi. The need for a strong Field Operation security team, taking account of the need for a presence in the field as well as at Kigali and for substitution arrangements during leave, should be given the highest priority. The public support of the Government for the Field Operation's role is also important as regards its security.

20. The Human Rights Field Operation in Rwanda is not only the High Commissioner's largest field presence, it operates in particularly difficult and dangerous circumstances in a relationship of sensitivity with a post-genocide Government. It is to be hoped that further discussions with the Government can maintain a common view of the usefulness of the Field Operation's local presence and monitoring, agreed modalities for dialogue and reporting on its findings, and a strategic capacity-building and promotional role linked clearly to the analysis of the human rights situation. The Field Operation then needs to be accorded the highest degree of priority as regards the strength of its direction, the professionalism of its human rights staff, its security arrangements, servicing by the Office of the High Commissioner, and stability and predictability in its funding.

Notes

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No.* (A/52/).